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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 NOMADIX, INC.,) Civil Action No.
17 Plaintiff,) CV09-08441 DDP (VBKx)
18 v.)
19 HEWLETT-PACKARD COMPANY et)
al.,)
20 Defendants.)
21)
22 AND RELATED COUNTERCLAIMS)
23)
24)
25)
26)
27)
28)

1 **ORDER AND STATEMENT OF GOOD CAUSE**

2 Plaintiff-Counterdefendant Nomadix, Inc., Defendant-Counterclaimant
3 iBAHN Corporation and Defendants LodgeNet Interactive Corporation and
4 LodgeNet StayOnline, Inc. (collectively, the “Parties”; individually, a “Party”)
5 each may possess software source code relating to the subject matter of this
6 action that they deem confidential, that has not been disseminated to the public
7 at large, that is not readily discoverable by competitors and that has been the
8 subject of reasonable efforts by the respective Parties to maintain its secrecy,
9 and for which special protection from public disclosure and from use for any
10 purpose other than prosecuting this litigation would be warranted. The Court
11 has entered a protective order (Docket No. 205) that contemplates that the
12 production of source code may be subject to additional provisions.

13 Accordingly, for good cause as recited above and in Docket No. 205,

14 IT IS HEREBY ORDERED that whenever, in the course of these
15 proceedings, any Party has occasion to disclose source code, the Parties shall
16 employ the following procedures:

17 **DEFINITIONS**

18 1. The term “Main Protective Order” refers to the protective order
19 entered by the Court as Docket No. 205.

20 2. The term “Supplemental Protective Order” refers to the instant
21 protective order.

22 3. All definitions from the Main Protective Order are incorporated
23 herein by reference and are modified only as expressly indicated herein.

24 **SUPPLEMENTAL NATURE**

25 4. This Supplemental Protective Order supplements the Main
26 Protective Order and is to be interpreted in conjunction with the Main Protective
27 Order. Unless this Supplemental Protective Order specifies otherwise, this
28 Supplemental Protective Order does not override or supplant any provisions in

1 the Main Protective Order.

2 **DESIGNATION**

3 5. Any Producing Party may designate Litigation Material as "Highly
4 Confidential – Source Code – Restricted Access Only" in accordance with this
5 Supplemental Protective Order.

6 6. The term "Highly Confidential – Source Code – Restricted Access
7 Only Material" refers to any Litigation Material designated "Highly
8 Confidential – Source Code – Restricted Access Only"; any copies thereof; and
9 the information contained in such Litigation Material or such copies, including
10 summaries of such information. The term "Protected Material" from the Main
11 Protective Order is hereby modified to include Highly Confidential – Source
12 Code – Restricted Access Only Material and all provisions in the Main
13 Protective Order referring to "Protected Material" are hereby updated
14 accordingly.

15 **Designation Procedure**

16 7. Paragraphs 10 through 13 of the Main Protective Order apply
17 equally and analogously to Highly Confidential – Source Code – Restricted
18 Access Only Material and designations of Litigation Material as "Highly
19 Confidential – Source Code – Restricted Access Only." Paragraph 14 of the
20 Main Protective Order is amended as follows (insertions underlined):

21 14. From the time of any deposition through the end of
22 thirty-one (31) business days after a final transcript of the
23 deposition is made available by a reporter, the deposition
24 (including exhibits) and any transcript or recording thereof shall be
25 treated as Highly Confidential – Attorneys' Eyes Only Material,
26 unless the contents of Highly Confidential – Source Code –
27 Restricted Access Only Material were explicitly discussed during
28 the deposition, in which case the deposition (including exhibits)

1 and any transcript thereof shall be treated as Highly Confidential –
2 Source Code – Restricted Access Only Material. At the end of the
3 thirty-one (31) business days, the deposition (including exhibits)
4 and any transcript or recording thereof shall be treated as public
5 information (with no confidentiality designation) except to the
6 extent designated pursuant to paragraph 12.

7 **Designation Qualifications**

8 8. Litigation Material may be designated “Highly Confidential –
9 Source Code – Restricted Access Only” (a) if it is or contains non-public source
10 code or (b) if it is or contains public source code used in a Producing Party’s
11 product—whether commercially released or developmental—and if the fact that
12 such public source code is used in the Producing Party’s product is (i) not
13 publicly known or (ii) a trade secret.

14 **DISCLOSURE**

15 9. A Receiving Party may disclose Highly Confidential – Source
16 Code – Restricted Access Only Material only to the persons or entities identified
17 in paragraphs 17(a) and 17(c) through 17(k) of the Main Protective Order. A
18 Receiving Party may disclose Highly Confidential – Source Code – Restricted
19 Access Only Material to an individual identified pursuant to paragraph 17(c) of
20 the Main Protective Order only after serving on the other Parties’ counsel a copy
21 of the confidentiality agreement attached to this Supplemental Protective Order
22 as Exhibit B signed by such individual and only after otherwise complying with
23 paragraph 17(c) of the Main Protective Order.

24 **FORMAT OF PRODUCTION**

25 10. For source code and files related to source code (e.g., configuration
26 files, Makefiles, files storing input or output related to source code and/or the
27 program that the source code underlies, files related to source code management
28 and/or revision systems, read me files, etc.) that are to be produced:

- 1 (a) The Producing Party shall produce the source code and all related files
2 in native format and broken out by version number and, if applicable,
3 product name and/or product model number. The Producing Party
4 shall identify or supply software and/or programming tools that can be
5 used to view and compile the source code. Should the Receiving Party
6 have reason to compile source code that includes source code
7 produced by the Producing Party and/or create executables from such
8 source code, the Parties shall confer as needed regarding whether
9 compiling such code or creating such executables can be
10 accommodated and, if so, how.
- 11 (b) The production of a given version of source code and related files shall
12 preserve all file names, directory names and directory structures.
- 13 (c) The Producing Party may produce source code and related files
14 designated “Highly Confidential – Source Code – Restricted Access
15 Only” pursuant to this Supplemental Protective Order and the Main
16 Protective Order on an encrypted CD(s), DVD(s), hard drive(s), virtual
17 drive(s) or other media.
- 18 (d) To the extent that total compliance with subparagraphs (a) and (b)
19 would be infeasible or burdensome for a Producing Party with respect
20 to non-source-code documents or information (e.g., with respect to
21 source code management or revision system files), the Producing Party
22 and Receiving Party will discuss solutions wherein the documents or
23 information are produced electronically and reasonably in compliance
24 with subparagraphs (a) and (b). This subparagraph (d) does not
25 exempt production of source code from compliance with
26 subparagraphs (a) and (b).
- 27 (e) Subparagraphs (a) through (d) apply to the extent the source-code
28 document or file related to source code is available to the Producing

1 Party in native format. If the document is not available in native
2 format (because, e.g., it is a printout of source code with handwritten
3 remarks), the document may be produced in accordance with the
4 Parties' agreements, and any orders by this Court, regarding other
5 types of documents.

6 **SUPPLEMENTAL SECURITY PROVISIONS**

7 11. To the extent any Receiving Party (apart from the persons
8 identified in paragraph 17(i) of the Main Protective Order) electronically
9 maintains Highly Confidential – Source Code – Restricted Access Only
10 Material, such Receiving Party shall maintain such Highly Confidential –
11 Source Code – Restricted Access Only Material on an encrypted CD(s),
12 DVD(s), hard drive(s), virtual drive(s) or other media. Access to the
13 password(s) or decryption key(s) used to unlock the encrypted media shall be
14 restricted and such password(s) or decryption key(s) shall be stored securely.
15 Upon request, if the Producing Party has a justifiable belief that Highly
16 Confidential – Source Code – Restricted Access Only Material has been
17 improperly disclosed, the Receiving Party shall provide the Producing Party
18 with a list of the persons with access to such password(s) or decryption key(s).
19 The Parties may use the free software tool TrueCrypt (www.truecrypt.org,
20 version 7.0) to encrypt Highly Confidential – Source Code – Restricted Access
21 Only Material. In particular, the Parties may use any encryption scheme offered
22 by TrueCrypt, including 256-bit Advanced Encryption Standard (AES).
23 Regardless of the encryption tool used, the Receiving Party must keep the
24 Highly Confidential – Source Code – Restricted Access Only Material in an
25 encrypted and inaccessible state whenever possible. For example, if TrueCrypt
26 is used, the Receiving Party shall maintain the Highly Confidential – Source
27 Code – Restricted Access Only Material in a TrueCrypt container / volume,
28 which will ensure that the Highly Confidential – Source Code – Restricted

1 Access Only Material is only decrypted in random-access memory (RAM);
2 additionally, the Receiving Party shall only mount the TrueCrypt volume
3 containing the Highly Confidential – Source Code – Restricted Access Only
4 Material to a drive as needed to review the code; when a review session is over,
5 the volume will be dismounted.

6 12. Regardless of how a Producing Party produces Highly Confidential
7 – Source Code – Restricted Access Only Material, the Receiving Party shall
8 store any Highly Confidential – Source Code – Restricted Access Only Material
9 in a locked room. Access to the key(s) used to unlock any such room shall be
10 restricted and, upon request if the Producing Party has a justifiable belief that
11 Highly Confidential – Source Code – Restricted Access Only Material has been
12 improperly disclosed, the Receiving Party shall provide the Producing Party
13 with a list of the persons who have had access to such key(s). Any entrance to
14 the locked room must be marked with an “Access Restricted” notice. The
15 Receiving Party shall maintain a log of all persons entering any such room to
16 view Highly Confidential – Source Code – Restricted Access Only Material and
17 shall provide a copy of the log to the Producing Party upon request if the
18 Producing Party has a justifiable belief that Highly Confidential – Source Code
19 – Restricted Access Only Material has been improperly disclosed.

20 13. Regardless of how a Producing Party produces Highly Confidential
21 – Source Code – Restricted Access Only Material, the Receiving Party may
22 electronically access such Highly Confidential – Source Code – Restricted
23 Access Only Material only from a computer that is not connected to the Internet
24 or a network, that is password-protected and that is kept in a locked room as
25 described in paragraph 12 of this Supplemental Protective Order. The
26 password(s) used to protect any such computer shall be stored securely and
27 access to such password(s) shall be restricted to the same individuals who have
28 access to the password(s) or decryption key(s) used to unlock encrypted media.

1 14. The Producing Party may choose to produce Highly Confidential –
2 Source Code – Restricted Access Only Material by producing a computer
3 containing the Highly Confidential – Source Code – Restricted Access Only
4 Material (“Computer Option”). If the Producing Party chooses the Computer
5 Option, the Receiving Party may not electronically transfer the Highly
6 Confidential – Source Code – Restricted Access Only Material from the
7 Computer Option computer to another device except as specifically allowed by
8 the Main Protective Order or this Supplemental Protective Order. The
9 Receiving Party must use the produced computer in accordance with paragraphs
10 12 and 13 of this Supplemental Protective Order. Any Computer Option
11 computer must be equipped with a Windows XP or Windows 7 operating
12 system, at least 100 GB of hard disk storage, at least 2 GB of RAM and a
13 modern processor (e.g., dual-core Intel processor). Additionally, the Producing
14 Party must configure any Computer Option computer to be password-protected
15 as contemplated in paragraph 13 of this Supplemental Protective Order. The
16 Producing Party may choose to disable or remove hardware options on or from
17 the Computer Option computer, such as network interface cards, USB ports and
18 optical drives, provided that the Computer Option computer can be adequately
19 used to review the Highly Confidential – Source Code – Restricted Access Only
20 Material stored thereon. The Receiving Party may not alter the hardware
21 configuration of the Computer Option computer without the Producing Party’s
22 written consent. If the Computer Option computer does not have a USB port or
23 optical drive enabled, it must install any software (to the extent permitted by
24 law) that the Receiving Party desires prior to producing the Computer Option
25 computer, or else give the Receiving Party its written consent to enable a USB
26 port or optical drive for such purpose. The Receiving Party and Producing Party
27 shall confer regarding any issues with the configuration of a Computer Option
28 computer and the Producing Party shall not unreasonably withhold its consent to

1 modifications to the Computer Option computer that will improve the Receiving
2 Party's ability to review the Highly Confidential – Source Code – Restricted
3 Access Only Material stored thereon without seriously compromising the
4 security of such Highly Confidential – Source Code – Restricted Access Only
5 Material. In complying with paragraph 30 of the Main Protective Order, the
6 Receiving Party must return to the Producing Party any Computer Option
7 computer unless the Producing Party permits its destruction, in which the case
8 the Receiving Party may alternatively ensure that the hard drive of the
9 Computer Option computer is securely erased in a manner agreed to by the
10 Producing Party.

11 15. The Receiving Party may print limited portions of Highly
12 Confidential – Source Code – Restricted Access Only Material as reasonably
13 necessary to facilitate the Receiving Party's furtherance of its claims and
14 defenses in this case. If Highly Confidential – Source Code – Restricted Access
15 Only Material is stored on a Computer Option computer that is not configured
16 to be used with a printer, the Producing Party shall not unreasonably refuse to
17 produce such limited portions of the Highly Confidential – Source Code –
18 Restricted Access Only Material in accordance with the Parties' agreements
19 regarding electronically stored information and documents originating in
20 electronic format; as an alternative to producing such limited portions, the
21 Producing Party may give the Receiving Party written consent to configure and
22 connect the Computer Option computer to a local computer for the limited
23 purpose of printing such limited portions of the Highly Confidential – Source
24 Code – Restricted Access Only Material, so long as any printouts are stamped
25 with "Highly Confidential – Source Code – Restricted Access Only" and only
26 disclosed to the individuals identified in paragraph 9 of this Supplemental
27 Protective Order. Nothing in this Supplemental Protective Order or the Main
28 Protective Order prevents the Parties from including Highly Confidential –

1 Source Code – Restricted Access Only Material in court filings made under seal
2 or from preparing exhibits including Highly Confidential – Source Code –
3 Restricted Access Only Material to be used in expert reports or at depositions,
4 hearings, trial, mediation or other proceedings in this case. Except as otherwise
5 permitted by this Supplemental Protective Order or the Main Protective Order,
6 the Receiving Party will not electronically transmit any of the Producing Party's
7 Highly Confidential – Source Code – Restricted Access Only Material in any
8 way from the offices of its Outside Counsel. However, nothing in this
9 Supplemental Protective Order or the Main Protective Order prevents a
10 Receiving Party from making and storing electronic copies of Highly
11 Confidential – Source Code – Restricted Access Only Material on a computer
12 (including a Computer Option computer), provided that in making, storing and
13 accessing such electronic copies the Receiving Party continues to comply with
14 the provisions of this Supplemental Protective Order and the Main Protective
15 Order. If the original Highly Confidential – Source Code – Restricted Access
16 Only Material is stored on a Computer Option computer whose hardware
17 configuration does not permit data to be transferred to another computer, the
18 Receiving Party must keep any electronic copies of the original Highly
19 Confidential – Source Code – Restricted Access Only Material on the same
20 Computer Option computer unless the Producing Party provides its written
21 consent for the Receiving Party to do otherwise. The Receiving Party shall only
22 make electronic copies of Highly Confidential – Source Code – Restricted
23 Access Only Material to the extent reasonably necessary to facilitate the
24 Receiving Party's furtherance of its claims and defenses in this case. Non-
25 exhaustive examples of permissible reasons for making electronic copies
26 include making copies for back-up purposes or so that a Receiving Party may
27 electronically annotate a copy of the Highly Confidential – Source Code –
28 Restricted Access Only Material.

1 16. A Receiving Party (apart from the persons identified in paragraph
2 17(i) of the Main Protective Order) may only transmit or transport Highly
3 Confidential – Source Code – Restricted Access Only Material as follows: (a) if
4 physically lodged or filed with the Court, served upon any Party, or sent to any
5 other person authorized under this Protective Order to receive Highly
6 Confidential – Source Code – Restricted Access Only Material, the Highly
7 Confidential – Source Code – Restricted Access Only Material must be sent (i)
8 in a sealed container via an established overnight, freight, delivery, or
9 messenger service or (ii) via a secure FTP to the extent expressly permitted by
10 this Supplemental Protective Order or the Main Protective Order elsewhere; (b)
11 if the Highly Confidential – Source Code – Restricted Access Only Material is
12 physically transported for any other purpose, the Receiving Party must retain
13 physical custody and control of the Highly Confidential – Source Code –
14 Restricted Access Only Material at all times and must store it in a locked, secure
15 place. A Receiving Party must notify the Producing Party immediately upon
16 learning that the transported Highly Confidential – Source Code – Restricted
17 Access Only Material did not reach its intended destination. With respect to
18 sub-paragraphs (a) and (b), except when being physically lodged or filed with
19 the Court, the Highly Confidential – Source Code – Restricted Access Only
20 Material must be transported on encrypted media.

21 17. Notwithstanding paragraphs 11 through 16 of this Supplemental
22 Protective Order, and to the extent authorized to receive Highly Confidential –
23 Source Code – Restricted Access Only Material, a Receiving Party may store
24 transcripts, recordings and exhibits (including those associated with depositions,
25 trial or other proceedings featuring testimony) designated “Highly Confidential
26 – Source Code – Restricted Access Only” on non-encrypted media and may
27 electronically access them from a computer that is connected to the Internet or a
28 network, provided that access to such transcripts, recordings and exhibits is

1 restricted to a limited number of people or users within the Receiving Party's
2 firm, organization, system, network, etc. by password or by privileges set by an
3 administrator. Nothing in this Supplemental Protective Order or the Main
4 Protective Order precludes a Receiving Party from storing on non-encrypted
5 media and accessing from a computer that is connected to the Internet or a
6 network any Litigation Material whose portions designated "Highly
7 Confidential – Source Code – Restricted Access Only" have been redacted or
8 otherwise removed.

USE AND RETURN OR DESTRUCTION

10 18. The term “Protected Technical Material” from the Main Protective
11 Order is hereby modified to include Highly Confidential – Source Code –
12 Restricted Access Only Material and all provisions in the Main Protective Order
13 referring to “Protected Technical Material” are hereby updated accordingly.

OBJECTIONS

15 19. Paragraph 33 of the Main Protective Order applies equally and
16 analogously to designations of Litigation Material as “Highly Confidential –
17 Source Code – Restricted Access Only” and the qualifications set forth in
18 paragraph 8 of this Supplemental Protective Order.

REVOCATION OF DESIGNATION

20 20. Paragraph 37 of the Main Protective Order applies equally and
21 analogously to Highly Confidential – Source Code – Restricted Access Only
22 Material and designations of Litigation Material as “Highly Confidential –
23 Source Code – Restricted Access Only.”

INADVERTENT PRODUCTION, DISCLOSURE OR DESIGNATION

25 21. Paragraph 39 of the Main Protective Order applies equally and
26 analogously to failures to designate Litigation Material as “Highly Confidential
27 – Source Code – Restricted Access Only.”

28 || 22. Paragraph 40 of the Main Protective Order applies equally and

1 analogously to this Supplemental Protective Order.

2 **EXEMPTIONS**

3 23. Paragraphs 41 through 43 of the Main Protective Order apply
4 equally and analogously to this Supplemental Protective Order.

5 **MISCELLANEOUS PROVISIONS**

6 24. This Supplemental Protective Order is without prejudice to the
7 right of any Producing Party to seek further or additional protection of
8 information. Nothing in this Supplemental Protective Order shall be deemed to
9 bar or preclude any Producing Party from seeking such additional protection,
10 including, without limitation, an order that certain matters may not be
11 discovered at all.

12 25. This Supplemental Protective Order is without prejudice to the
13 right of any Receiving Party to seek modification of or relief from this
14 Protective Order. Nothing in this Supplemental Protective Order shall be
15 deemed to bar or preclude any Receiving Party from seeking such modification
16 or relief.

17 26. The entry of this Supplemental Protective Order shall not be
18 construed as a waiver of any right to object to the furnishing of information in
19 response to discovery and, except as expressly provided, shall not relieve any
20 Producing Party of the obligation of producing information in the course of
21 discovery.

22 27. All notices required by this Supplemental Protective Order are to
23 be made by e-mail, certified mail or overnight mail to Outside Counsel
24 representing the noticed Party or non-party. The date by which a Party or non-
25 party receiving notice shall respond or otherwise take action shall be computed
26 from the date of receipt of the notice. Any of the notice requirements herein
27 may be waived in whole or in part, but only in writing signed by an attorney for
28 the Party or non-party that is otherwise to be noticed.

28. The terms of this Supplemental Protective Order shall survive and remain in effect after the Termination of this Action. The Court shall retain jurisdiction to hear disputes arising out of this Protective Order.

IT IS SO ORDERED.

Dated: December 01, 2010

/s/ _____
Honorable Victor B. Kenton

Respectfully submitted

KNOBBE MARTENS OLSON & BEAR LLP

Dated: October 29, 2010

By: /s/ *Douglas G. Muehlhauser*

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12 LODGENET STAYONLINE, INC., and
13 ON COMMAND CORPORATION

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EXHIBIT B

I have read and fully understand the Main Protective Order entered on _____, 2010 and the Supplemental Protective Order entered on _____, 2010 in the matter of *Nomadix, Inc. v. Hewlett-Packard Company et al.*, Case No. CV09-8441 DDP (VBKx), and agree to be bound by and comply fully with the terms of such orders. Specifically, I will not disclose or permit the unauthorized viewing or disclosure of Protected Material as set forth in the Main Protective Order or the Supplemental Protective Order. Furthermore, if Protected Technical Material is disclosed to me, I will not, until two (2) calendar years after the Termination of this Action, on behalf of a patent applicant or patentee, prepare and/or amend any patent applications of any kind, draft and/or amend patent claims of any kind (including claims that are the subject of reissue or reexamination proceedings), supervise such activities, or consult on such activities whenever such patent applications or patent claims relate to (1) the patents-in-suit or contain claims that it is reasonably likely may be asserted against the Producing Party in this Action or any other action; and relate to (2) charging for, providing or controlling access to computer networks, or to network devices involved in charging for, providing or controlling access to computer networks. I further understand that failure to comply fully with the terms of such Protective Order may lead to sanctions imposed by the Court. I submit myself to the Court's jurisdiction for purposes of enforcement of the Protective Order.

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24

Date _____

Signature

26

27

Printed Name

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